


**Council of the District of Columbia
Committee on Finance and Revenue
Committee Report**

1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

2018 NOV -7 AM 11:20
OFFICE OF THE
SECRETARY

To: All Councilmembers

From: Jack Evans, Chairman
Committee on Finance and Revenue 

Date: November 7, 2018

Subject: Report on Bill 22-914, the "Internet Sales Tax Amendment Act of 2018"

The Committee on Finance and Revenue reports **favorably** on 22-914, the "Internet Sales Tax Amendment Act of 2018" and recommends its approval by the Council of the District of Columbia.

TABLE OF CONTENTS

- I. Background, Purpose, and Effect
- II. Legislative History
- III. Position of the Executive
- IV. Advisory Neighborhood Commission
- V. Summary of Testimony
- VI. Impact on Existing Law
- VII. Fiscal Impact Statement
- VIII. Section by Section Analysis
- IX. Committee Action
- X. Attachments

I. BACKGROUND, PURPOSE, AND EFFECT

Bill 22-914, the "Internet Sales Tax Amendment Act of 2018", was introduced on July 9, 2018, by Chairman Mendelson and Councilmember Evans. As introduced, the proposed legislation would amend Title 47 of the District of Columbia Official code to require that internet sales tax be collected from online retailers who do not have a physical presence in the District of Columbia and directs any revenue generated to go towards lowering the commercial real property tax rate. Online retailers would be required to collect and remit sales tax if during the previous or current calendar year have gross receipts from sales to the District over \$100,000 or more than 200 sales to the District (a "small seller exemption"). The Bill confirms the collection of sales tax would apply to "any seller selling tangible personal property, products transferred electronically or services for delivery into the District of Columbia, who does not have a physical presence in the state". The Bill would lower the commercial real property tax rate (class 2) of \$1.89 per \$100 of assessed value for commercial real property assessed greater than \$10

Million¹, to the previous rate of \$1.85 per \$100 of assessed value. The bill also repeals the “Internet Sales Tax, Homeless Prevention, and WMATA Momentum Fund Establishment Act of 2013”², which was established in D.C. Law 20-61.

Bill 22-914 was introduced as a result of the Supreme Court decision in *South Dakota v. Wayfair, Inc., 2018*³ (*Wayfair*) in which the Court ruled that states may charge tax on purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state.

The establishment of the WMATA Momentum Fund was originally included in the Fiscal Year 2014 Budget Support Act of 2013⁴, and directed sales tax collected from products and goods sold via the internet to help provide a dedicated funding source to the Washington Metropolitan Area Transit Authority (WMATA). Before the *Wayfair* decision occurred, earlier this year the District, Maryland and Virginia all made a uniform decision and each jurisdiction passed legislation to provide a dedicated source of funding for WMATA. Part of the District’s dedicated funding sources was provided by an increase to the commercial real property tax rate. Now, because of the *Wayfair* decision, the District has the authority to begin collecting taxes on sales through the internet and should return the commercial real property tax rate to \$1.85 per \$100 of assessed value.

The committee print of the Bill expands upon the introduced version to define digital goods, marketplace, expand the definition of vendor to include retailers without a physical presence in the District, expand the definition of retailer to include marketplace facilitator (3rd party sales sites) and marketplace sellers (3rd parties who sell on third party sales sites), expand the definition of retail sale to include digital products and clarify sales tax assessed on products delivered electronically. The Bill also establishes January 1, 2019 as the date when sales tax shall begin to be collected, except for the marketplace, which shall begin to collect sales tax as of April 1, 2019. As defined in the committee print, “digital goods” would include audiovisual works, digital audio works, digital books, digital codes, digital applications and games and any otherwise taxable tangible personal property electronically or digitally delivered. Digital goods does not include cable television service, satellite relay television service, or any other distribution of television, video, or radio. “Marketplace” means a physical or electronic place, including a store, a booth, an internet web site, a catalogue, or a dedicated sales software application where a retail sale occurs. Because Bill 22-914 will only be in effect for a portion of Fiscal Year 2019, the committee print directs the revenue collected during Fiscal year 2019 to go to the Commission on the Arts and Humanities to provide grants awards.

II. LEGISLATIVE HISTORY

July 9, 2018 Bill 22-914, the “Internet Sales Tax Amendment Act of 2018” is introduced by Chairman Mendelson and Councilmember Evans.

¹ The rate of \$1.89 per \$100 of assessed value was included as a part of the Fiscal Year 2019 Budget, effective October 1, 2018.

² D.C. Law 20-61, D.C. Official Code §47-3931 *et seq.*

³ *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 201 L. Ed. 2d 403 (2018).

⁴ Section 7134 of Bill 20-199, the “Fiscal Year 2014 Budget Support Act of 2013”, D.C. Law 20-61.

July 10, 2018	Bill 22-914 is referred to the Committee on Finance and Revenue.
July 20, 2018	Notice of Intent to Act on New Legislation for Bill 22-914 is published in the <i>D.C. Register</i> . ⁵
September 21, 2018	Notice of public hearing on Bill 22-914, and other matters, is published in the <i>D.C. Register</i> . ⁶
October 10, 2018	Public hearing held on Bill 22-914, and other matters.
November 7, 2018	Consideration and vote on Bill 22-914 by the Committee on Finance and Revenue.

III. POSITION OF THE EXECUTIVE

The Committee did not receive any additional comments from the Executive.

IV. ADVISORY NEIGHBORHOOD COMMISSION

The Committee did not receive comments from any Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY

The Committee on Finance and Revenue held a public hearing on Bill 22-914 and other matters on October 10, 2018, starting at 10:10 a.m. The hearing was attended by Chairman Jack Evans.

Chairman Evans presented an opening statement on the legislation:

Next, we have Bill 22-914, the "Internet Sales Tax Amendment Act of 2018" As introduced, this legislation would amend Chapter 20 of Title 47 of the District of Columbia Official Code to require that internet sales tax be collected from online retailers, and would direct generated revenues to lower the commercial property tax rate.

This Bill was introduced as a result of a Supreme Court decision earlier this year in the South Dakota v. Wayfair, Inc. case, in which the Court ruled that states may charge tax on purchases made from out-of-state sellers even if the seller does not have a physical presence in the taxing state.

Suggested changes to the legislation have been provided by the Office of Tax and Revenue, and I expect will be explained as part of their testimony.

A video recording of the hearing can be viewed at oct.dc.gov. The following witnesses testified before the Committee, and copies of their testimony can be found in Attachment C:

⁵ Page 007544 of the July 20, 2018 *D.C. Register*.

⁶ Page 009716 of the September 21, 2018 *D.C. Register*.

Alan Roth testified regarding the legislation. Mr. Roth spoke against directing revenues collected from the legislation towards reducing the commercial real property tax rate and suggested directing the revenue towards paying DC Water's Clean Rivers Impervious Area Charge instead.

Jessica Brown, Assistant General Counsel, Office of Tax and Revenue, Office of the Chief Financial Officer provided testimony regarding the legislation. Ms. Brown provided a brief overview of the legislation as introduced, noting the legislation proposes modernizing the District's sales and use tax laws because of the Supreme Court decision in *South Dakota v. Wayfair*, in which the physical presence requirement for collecting and remitting sales tax was removed. Ms. Brown noted the Office of Tax and Revenue had identified some administrative and legal concerns with some provisions in the introduced version and drafted recommended changes for consideration that were provided as an attachment to her written testimony.

Additional comments received for the record can also be found in Attachment C. The public hearing adjourned at 11:05 a.m.

VI. IMPACT ON EXISTING LAW

Bill 22-914 amends existing law to add definitions of digital goods, marketplace, marketplace facilitator and marketplace seller which are responsible for collecting and remitting sales tax. It also includes marketplace facilitator and seller in the definition of retailer. Expands the definition of vendor to include a person or retailer that does not have a physical presence in the District, but had retail sales delivered of a minimum amount. It also further amends existing law to reduce the commercial real property tax rate of \$1.89 to \$1.85. Repeals Chapter 39A, the "Internet Sales Tax, Homeless Prevention, and WMATA Momentum Fund Establishment Act of 2013".

VII. FISCAL IMPACT

The Chief Financial Officer's fiscal impact statement of November 7, 2018 states that funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bill will increase sales tax revenue beginning in fiscal year 2019, generating a total of \$96.9 million during the financial plan period.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1 states the short title of the legislation.

Section 2 makes several amendments to Title 47. Reduces the commercial real property tax rate of \$1.89 per \$100 of assessed value for properties assessed at over \$10 million to \$1.85, if sufficient revenue is certified by the Chief Financial Officer in the February revenue estimate each year, beginning with the February, 2019 estimate. Creates new section of the code to define digital goods including supporting definitions of digital audiovisual works, digital audio works, digital books, digital code, digital applications and games; which are subject to sales tax. Creates

new subsections to define marketplace, marketplace facilitator, and marketplace seller; which are subject to collecting and remitting sales tax. Updates the definition of vendor to include a person or retailer that does not have a physical presence in the District that in the previous calendar year or current calendar year had gross receipts from all retail sales delivered into the District that exceeds \$100,000, or 200 or more separate retail sales delivered into the District. Creates a new section of the code to establish marketplace facilitators sales tax requirements, including that the marketplace facilitator shall collect and remit sales tax on all sales the marketplace facilitator makes on its own behalf and on behalf of marketplace sellers. Clarifies television, video or radio services to subscribers or paying customers collection as for other than sales of digital goods. Repeals Chapter 39A, Internet Tax (Law 20-61).

Section 3 contains the applicability date of January 1, 2019, except that the marketplace provisions shall be applicable as of April 1, 2019.

Section 4 contains the fiscal impact statement.

Section 5 contains the effective date statement.

IX. COMMITTEE ACTION

The Committee on Finance and Revenue convened at 10:20 a.m. on Wednesday, November 7, 2018 to consider and vote on Bill 22-914. Chairman Evans recognized the presence of a quorum, consisting of himself and Councilmembers Gray and R. White.

Discussion ended, Chairman Evans then moved Bill 22-914 *en bloc*, with leave for the Committee staff to make technical and conforming amendments.

The members voted as follows:

	<u>Report on Bill 22-914</u>	<u>Committee Print on Bill 22-914</u>
Chairman Evans	YES	YES
Councilmember Gray	YES	YES
Councilmember McDuffie	ABSENT	ABSENT
Councilmember Silverman	ABSENT	ABSENT
Councilmember R. White	YES	YES

Thus, the bill and accompanying report were passed, with a majority of Members present voting in the affirmative, with 3 votes in support, 0 votes against, and 2 Members absent.

The committee meeting adjourned at 10:30 a.m.

X. ATTACHMENTS

- A. Bill 22-914 as introduced.
- B. October 10, 2018 public hearing notice for Bill 22-914.


- C. Witness list and testimony from the October 10, 2018 public hearing on Bill 22-914.
- D. Fiscal impact statement.
- E. Legal sufficiency determination.
- F. Comparative Print of sections amended by Bill 22-914.
- G. Committee Print of Bill 22-914.

(A)

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : July 13, 2018

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Monday, July 9, 2018. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Internet Sales Tax Amendment Act of 2018", B22-0914

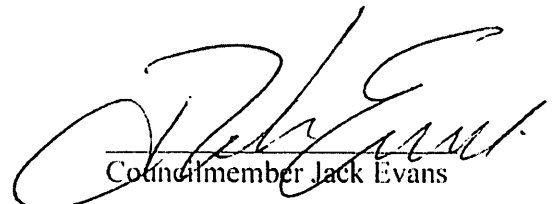
INTRODUCED BY: Chairman Mendelson and Councilmember Evans

The Chairman is referring this legislation to the Committee on Finance and Revenue.

Attachment

cc: General Counsel
Budget Director
Legislative Services

1 
2 Chairman Phil Mendelson


Councilmember Jack Evans

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8 A BILL
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11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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13
14 To amend Chapter 20 of Title 47 of the District of Columbia Official Code to require that internet
15 sales tax be collected from online retailers, to direct generated revenues to lower the
16 commercial property tax rate; and to repeal the Internet Sales Tax, Homelessness
17 Prevention, and WMATA Momentum Fund Establishment Act of 2013.
18

19 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
20 act may be cited as the "Internet Sales Tax Amendment Act of 2018".

21 Sec. 2. Chapter 20 of Title 47 of the District of Columbia Official Code is amended as
22 follows:

23 (a) The table of contents is amended by adding a new section designation to read as
24 follows:

25 "47-2034. Dedication of internet sales tax revenue for commercial real property tax rate
26 reduction"

27 (b) A new section 47-2034 is added to read as follows:

28 "§ 47-2034. Dedication of sales tax revenue for commercial real property tax rate reduction.

29 "(a) Any seller selling tangible personal property, products transferred electronically, or
30 services for delivery into the District of Columbia, who does not have a physical presence in the
31 state, shall collect and remit the sales tax as required pursuant to § 47-2002(a) and shall follow all

applicable procedure and requirements of law as if the seller had a physical presence in the District of Columbia, provided that the seller meets either of the following criteria in the previous calendar year or the current calendar year:

“(1) The seller’s annual gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into the District of Columbia exceeds one hundred thousand dollars: or

“(2) The seller sold tangible personal property, any product transferred electronically, or services for delivery into the District of Columbia in two hundred or more separate transactions in a 12-month period.

“(b) A seller is not required to collect or remit the sales tax required by subsection (a) of this section before the effective date of this act.

“(c) Notwithstanding any other provision of law, beginning in fiscal year 2019 the sales tax revenue generated pursuant subsection (a) of this section shall be allocated as follows:

“(1) Reduce the rate from \$1.89 to \$1.85 for each \$100 of assessed value if the real property’s assessed value is greater than \$10 million; and

“(2) All remaining additional revenues to the General Fund of the District of Columbia.”.

Sec. 3. The Internet Sales Tax, Homelessness Prevention, and WMATA Momentum Fund Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; to be codified at D.C. Official Code § 47-3931 *et seq.*) is repealed.

52 Sec. 4. Fiscal impact statement.

53 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
54 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
55 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

56 Sec. 5. Effective date.

57 This act shall take effect following approval by the Mayor (or in the event of veto by the
58 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
59 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
60 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
61 Columbia Register.



**Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Hearing**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

**COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE**

ANNOUNCES A PUBLIC HEARING ON:

Bill 22-576, the "Energy-Efficiency and Water-Efficiency Sales Tax Holiday Amendment Act of 2017"

Bill 22-654, the "Uniform Unclaimed Property Act Revision Act of 2018"

Bill 22-914, the "Internet Sales Tax Amendment Act of 2018"

Wednesday, October 10, 2018

10:00 a.m.

Room 120 - John A. Wilson Building

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Wednesday, October 10, 2018 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 22-576, the "Energy-Efficiency and Water-Efficiency Sales Tax Holiday Amendment Act of 2017" would amend section 47-2005 of the District of Columbia Official Code to provide for a sales tax holiday for energy-efficient and water-efficient products beginning at 12:01 a.m., on the Saturday preceding Memorial Day and ending at 11:59 p.m., on Memorial Day and beginning at 12:01 a.m. on the Saturday preceding Columbus Day and ending at 11:59 p.m. on Columbus Day, and on the weekend of those holidays each May and October thereafter.

Bill 22-654, the "Uniform Unclaimed Property Act Revision Act of 2018" would enact the Revised Uniform Unclaimed Property Act, to provide rules for determining when property is presumed abandoned; reports by holders of such property to the District's Administrator of Unclaimed Property; notice to apparent owners of such property; taking of custody, sale, and administration of such property by the Administrator claims to recover such property from the Administrator; verified reports of such property and examination of records; determination of liability of and remedies by putative holders; enforcement agreements to locate property held by Administrator; and confidentially an security of information.

Bill 22-914, the "Internet Sales Tax Amendment Act of 2018" would amend Chapter 20 of Title 47 of the District of Columbia Official Code to require that internet sales tax be collected from online retailers, to direct generated revenues to lower the commercial property tax rate.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, October 9, 2018. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

**Council of the District of Columbia
Committee on Finance and Revenue
AGENDA**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

**COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE**

PUBLIC HEARING ON:

**B22-576, the “Energy-Efficiency and Water-Efficiency Sales Tax Holiday Amendment Act of 2017”
B22-914, the “Internet Sales Tax Amendment Act of 2018”
B22-654, the “Uniform Unclaimed Property Act Revision Act of 2018”**

**Wednesday, October 10, 2018
10:00 a.m.**

**Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

- I. Opening Remarks**
- II. Witness List**

- B22-576, the “Energy-Efficiency and Water-Efficiency Sales Tax Holiday Amendment Act of 2017”
 - 1. Elissa Borges, Assistant General Counsel, Office of Tax and Revenue, Office of the Chief Financial Officer
- B22-914, the “Internet Sales Tax Amendment Act of 2018”
 - 1. Alan Roth
 - 2. Blanche McLeod
 - 3. Jessica Brown, Assistant General Counsel, Office of Tax and Revenue, Office of the Chief Financial Officer
- B22-654, the “Uniform Unclaimed Property Act Revision Act of 2018”
 - 1. Jim McLaughlin, Deputy General Counsel, DC Press Association
 - 2. Joann Waiters, Regional Vice President, American Council of Life Insurers
 - 3. Michael Houghton, National Conference of Commissioners on Uniform State Laws
 - 4. James C. McKay, Jr., Chair, D.C. Uniform Law Commission, Office of the Attorney General for the District of Columbia
 - 5. Bruno Fernandes, Deputy Chief Financial Officer and Treasurer, Office of Finance and Treasury, Office of the Chief Financial Officer

- III. Announcements**
- IV. Adjournment**

TESTIMONY OF ALAN J. ROTH
COMMITTEE ON FINANCE AND REVENUE
"INTERNET SALES TAX AMENDMENT ACT OF 2018", BILL 22-914
OCTOBER 10, 2018

Mr. Chairman and Committee Members:

Thank you for the opportunity to speak about the proposed Internet Sales Tax Amendment Act of 2018. My name is Alan Roth, and I'm a resident of Adams Morgan.

In the wake of the Supreme Court's opinion in the *Wayfair* case, it is certainly understandable that the District would avail itself of the opportunity offered by that decision to raise revenue from the online commerce originating within our borders. While no one likes to pay sales tax, I can certainly understand and appreciate the desire of our brick-and-mortar retailers to level the playing field with their Internet competitors.

I cannot understand, however, the justification for earmarking those revenues to lower the tax rate on the highest valued commercial properties in DC. When I read about this bill, I had to pinch myself to make sure it hadn't been drafted by the Republican majority on Capitol Hill. While I don't have the benefit of an in-depth study from the District's Office of Revenue Analysis, I suspect the majority of the sales taxes generated by this legislation will come from ordinary consumers. Handing over those monies in the form of tax cuts to big commercial property owners is not only unfair, it flies in the face of other budget decisions this Council and the Mayor have made as recently as this fiscal year.

For example, in May, Councilmember Cheh held a hearing in her Committee about complaints that DC Water's Clean Rivers Impervious Area Charge was going up so fast that low-income residents and non-profits were having a hard time paying their DC Water bills. The Mayor's proposed solution – ultimately adopted by the Council – was to throw a small pittance of money at the problem, \$7 million, and to demand that DC Water come up with another \$6 million from its own ratepayer funds. As a former member of the DC Water Board of Directors, I argued that a more equitable solution was to have the District Government pay its own fair share of the Impervious Area Charge – for the streets, sidewalks, and alleys that contribute to the problem – something that would cost the District between \$35 and \$40 million – and thereby lower *everyone's* Impervious Area Charges by as much as one-third. Chairwoman Cheh's reply, to paraphrase, was "there isn't any money." My response was that you, Mr. Chairman, and Councilmember Grosso, just a couple of weeks previously, had earmarked ¼% of the DC sales tax to fund arts and humanities programs to the tune of \$30 million – an earmark that hadn't ever existed before. If the Council wants to address bigger, broader needs of the general public, you obviously have the means to do so if you make it a priority.

Paying the District's share of the IAC would not only be a fairer and more broad-based use of online sales tax proceeds, it would be much simpler and more direct way of addressing the Clean Rivers issue than the one currently being proposed. I've seen the outlines of the plan being worked out between DC Water and the Mayor's Office. Apart from nearly needing a Ph.D. to understand it, it's going to provide subsidies to 2-person households earning nearly \$100,000



annually – hardly a low-income assistance program – and it's going to produce a feeding frenzy for DOEE money among nonprofits, especially churches, based on criteria that are inevitably going to land people in a corruption scandal.

If you don't think using the money for that purpose is the highest and best use of these online sales taxes, then I'm sure there are other broad-based uses to which they could be put. Perhaps you could fund a different program from which a broad range of District residents benefit. Or perhaps you could reduce everyone's taxes just a bit.

But reducing big commercial property owners' taxes? In the wake of the Republican tax bill just enacted at the federal level, which favored the real estate industry as much as almost any industry in the nation, *aren't these people rich enough already?*

In an election season where the District's paid family and medical leave bill has taken center stage – and the main argument touted by the Mayor in opposition to that bill and its main sponsor is that it would benefit too many Marylanders and Virginians – I find it particularly ironic that the Committee would consider shoveling money directly from the pockets of District consumers into the pockets of huge commercial property landlords and their big downtown triple-net tenants. After we're finished picking through all their corporate and LLC filings to discern the real parties in interest here, I'm sure we'll find the true beneficiaries of this legislation are, overwhelmingly, residents of other jurisdictions.

In summary, the *Wayfair* case has cleared the path for the imposition of online sales taxes in the District. So be it. But that does not justify using those revenues in the manner proposed by this bill. The 700,000 residents of D.C. have many other claims on those funds, and since they'll be paying the lion's share of them, they ought to receive the lion's share of the benefit.

Internet Sales Tax Amendment Act of 2018, Bill 22-914

Before the Committee on Finance and Revenue

The Honorable Jack Evans, Chairman

**October 10, 2018, 10:00 AM
Room 120, John A. Wilson Building**



**Testimony of
Jessica Brown
Assistant General Counsel
Office of Tax and Revenue**

**Jeffrey S. DeWitt
Chief Financial Officer
Government of the District of Columbia**

Good morning Chairman Evans and members of the Committee on Finance and Revenue. My name is Jessica Brown, Assistant General Counsel in the Office of Tax and Revenue. I am pleased to present testimony today on Bill 22-914, the “Internet Sales Tax Amendment Act of 2018” (the “Bill”).

As introduced, the Bill proposes to modernize the District’s sales and use tax laws as a result of the U.S. Supreme Court decision in *South Dakota v. Wayfair*. Prior to *Wayfair*, the Supreme Court had limited the ability of states and the District of Columbia (“District”) to impose sales tax collection and reporting requirements to retailers with a physical presence in the jurisdiction. Current District tax law reflects this “physical presence” requirement. The *Wayfair* decision overturned those prior Supreme Court decisions and upheld a South Dakota law that imposed sales tax collection and reporting requirements on out-of-state retailers. Under the *Wayfair* decision, the physical presence requirement for collecting and remitting sales tax was removed.

The Bill expands the District’s sales tax collection requirements to retailers who do not have physical presence in the District. The Bill adopts what is referred to a “small seller exemption” to this sales tax collection requirement, exempting out-of-state retailers whose gross receipts from sales to the District are \$100,000 or less or who make 200 or fewer sales in the District in a 12-month period. The Bill

also expands the sales tax to apply to sales of “products transferred electronically” in the District.

The Bill also seeks to designate the revenue from the sales tax amendments for the purpose of reducing the commercial property tax rate on properties whose assessed value is greater than \$10 million from \$1.89 for each \$100 of assessed value, to \$1.85 for each \$100 of assessed value. The Office of Revenue Analysis estimates that such property tax reduction would cost approximately \$32.9 million in fiscal year 2019.

The Office of Tax and Revenue has identified certain administrability and legal concerns with some of the provisions of the Bill, and has drafted recommended changes for consideration of the Committee that are attached to this testimony. Generally, we recommend the Bill be drafted to accord with the guidance provided in the *Wayfair* decision to avoid potential legal challenges. We offer the following specific suggestions to align the Bill with the procedures outlined in *Wayfair*:

First, the Bill creates a new standalone section for the imposition of collection and reporting requirements. The Bill should incorporate the new requirements into the existing sales tax framework to remain in compliance with the *Wayfair* decision.

Second, the Bill does not define which “products delivered electronically” are subject to the sales tax or provide taxpayers clarity regarding the taxability of such digital products.

Third, the Bill does not address the compliance requirements of online marketplace sellers who connect sellers and buyers and handle sales transactions on behalf of buyers.

Fourth, the Bill lacks a certain prospective effective date for application of the sales tax changes, as required by the *Wayfair* decision.

And fifth, the Bill contemplates a direct dedication of revenues from the sales tax changes to the commercial property tax rate reduction. The increased revenues from these sales tax changes cannot be directly separated or tracked by the Office of Tax and Revenue. Retailers affected by the Bill will register and pay sales tax in the same manner and on the same form as all other retailers, and it is not possible to directly identify or track those taxpayers without physical presence in the District. Accordingly, a direct dedication of revenues to reduce property tax rates cannot be administered.

The Office of Tax and Revenue’s proposed amendment to the Bill would expand the sales tax definition of “vendor” to include retailers without a physical presence in the District and maintains the same small seller exemptions included in the Bill. The amendment would expand the definition of “retailer” to include

“marketplace facilitators” (i.e., third party sales sites) and “marketplace sellers” (third parties who sell on third party sales sites) to make clear that such marketplace facilitators and sellers are required to collect and remit District sales tax.

Further, the amendment would update the existing definition of “retail sale” to include “digital products” to clarify the Bill’s imposition of sales tax on “products delivered electronically”. Conforming changes would also be made to the gross receipts tax. The amendment also includes an effective date of January 1, 2019 for all sales tax changes in order to provide adequate notice to taxpayers, as required by the *Wayfair* decision.

The amendment also includes a provision that would reduce the commercial property tax rates on properties whose assessed value is greater than \$10 million for the tax year beginning October 1, 2019 and again for the tax year beginning October 1, 2020 to the extent possible given the 2019 and 2020 quarterly fiscal estimates of revenue generated by this Bill. The Office of Revenue Analysis estimates the bill would generate approximately \$20.3 million of revenue annually, which would be sufficient to reduce the commercial property tax rate on properties valued at greater than \$10 million to \$1.87 for the property tax year beginning October 1, 2019.

OTR’s amendment also includes minor administrative changes to conform existing tax provisions to the changes implemented by the Bill.

Thank you, Chairman Evans, for the opportunity to comment on this Bill. I would be happy to answer any questions at this time.

1
2 Chairman Phil Mendelson

Councilmember Jack Evans

3
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5
6 A BILL
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9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
10

11
12 To amend Chapter 8 of Title 47 of the District of Columbia Official Code to provide for triggers to
13 lower the commercial property tax rates for real property with an assessed value of greater
14 than \$10 million; to amend Chapter 20 of Title 47 of the District of Columbia Official
15 Code to clarify that persons and retailers without a physical presence in the District are
16 vendors required to collect and pay sales tax on retail sales; to limit the ability of the
17 District to collect sales taxes from vendors without a physical presence in the District; to
18 expand the definition of retailer to include marketplace facilitators and marketplace sellers;
19 to clarify that the sale of electronically delivered products is a retail sale subject to sales
20 tax; to amend Chapter 22 of Title 47 of the District of Columbia Official Code to make
21 conforming changes to the use tax regarding electronically delivered products; to amend
22 Chapter 25 of Title 47 of the District of Columbia Official Code to clarify that
23 electronically delivered products subject to sales or use tax are not also subject to the gross
24 receipts tax; and to repeal the Internet Sales Tax, Homelessness Prevention, and WMATA
25 Momentum Fund Establishment Act of 2013.
26

27 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
28 act may be cited as the "Property Tax Relief and Remote Vendor Sales Tax Clarification
29 Amendment Act of 2018".

30 Sec. 2. D.C. Code § 47-812(b-9)(2) is amended by adding new subparagraphs (D) and
31 (E) to read as follows:

32 "(D)(i) Notwithstanding subparagraph (C)(iii) of this paragraph, for the tax year
33 beginning October 1, 2019 and each tax year thereafter, the recurring annual revenue attributable
34 to the Property Tax Relief and Remote Vendor Sales Tax Clarification Amendment Act of 2018
35 (Bill 22-0XXX) as certified by the Chief Financial Officer in the quarterly estimate issued in

February 2019 shall, to the extent total recurring annual revenue is in excess of that required for the financial plan for fiscal year 2019 as required by D.C. Code § 1-204.24d, reduce the property tax rate under subparagraph (C)(iii) of this paragraph, as determined at the time of such quarterly revenue estimate, to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value that is no less than \$1.85 per \$100 of assessed value.

(ii) If the tax rate calculated under subparagraph (D)(i) of this paragraph remains greater than \$1.85 per \$100 of assessed value, the rate shall be further reduced as provided under subparagraph (E) of this paragraph.

“(E)(i) Notwithstanding subparagraphs (C)(iii) and (D) of this paragraph, for the tax year beginning October 1, 2020 and each tax year thereafter, the recurring annual revenue attributable to the Property Tax Relief and Remote Vendor Sales Tax Clarification Amendment Act of 2018 (Bill 22-0XXX) as certified by the Chief Financial Officer in the quarterly estimate issued in February 2020 shall, to the extent total recurring annual revenue is in excess of that required for the financial plan for fiscal year 2020 as required by D.C. Code § 1-204.24d, reduce the property tax rate under subparagraph (D) of this paragraph, as determined at the time of such quarterly revenue estimate, to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value that is no less than \$1.85 per \$100 of assessed value.

“(ii) This subparagraph shall not be effective unless its provisions reduce the tax rate below that amount set pursuant to subparagraph (D) of this paragraph.”.

Sec. 3. Chapter 20 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-2001 is amended as follows:

(1) A new subsection (d-1) is added to read as follows:

59 “(d-1) (1) “Digital goods” means “digital audiovisual works,” “digital audio works,”
60 “digital books,” “digital codes,” “digital applications and games,” and any other otherwise
61 taxable tangible personal property electronically or digitally delivered, whether electronically or
62 digitally delivered, streamed or accessed and whether purchased singly, by subscription or in any
63 other manner, including maintenance, updates and support and further defined as follows:

64 “(A) “Digital audiovisual works” means a series of related images that,
65 when shown in succession, impart an impression of motion, together with accompanying sounds.
66 “Digital audiovisual works” includes motion pictures, musical, videos, news and entertainment
67 programs, and live events.

68 “(B) “Digital audio works” means works that result from the fixation of
69 a series of musical, spoken, or other sounds, that are transferred electronically, including
70 prerecorded or live songs, music, readings of books or other written materials, speeches,
71 ringtones, or other sound recording.

72 “(C) “Digital books” means works that are generally recognized in the
73 ordinary and usual sense as “books” that are transferred electronically, including works of
74 fiction, nonfiction, and short stories.

75 “(D) “Digital code” means a code that provides the person who holds
76 the code a right to obtain an additional digital good, a “digital audiovisual work,” “digital audio
77 work”, or “digital book” and that may be obtained by any means, including tangible forms and
78 electronic mail, regardless of whether the code is designated as song code, video code, or book
79 code. “Digital code” includes codes used to access or obtain any specified digital goods, or any
80 additional digital goods that have been previously purchased, and promotion cards or codes that
81 are purchased by a retailer or other business entity or use by the retailer’s or entity’s customers.

82 “(E) “Digital applications and games” mean any application or game,
83 including add-ons or additional content that can be used by a computer, mobile device, or tablet
84 notwithstanding the function performed.”.

85 “(2) Digital goods shall not include cable television service, satellite relay
86 television service, or any and all other distribution of television, video, or radio service
87 subject to tax under § 47–2501.01, unless expressly included in the definition of digital
88 goods under paragraph (1) of this subsection.

89 (2) New subsections (h-1a), (h-1b) and (h-1c) are added to read as follows:

90 “(h-1a) “Marketplace” means a physical or electronic place, including, but not limited to,
91 a store, a booth, an internet web site, a catalogue or a dedicated sales software application, where
92 retail sales, as defined in subsection (n) of this section, occur.

93 “(h-1b) “Marketplace facilitator” means any person who provides a marketplace that lists,
94 advertises, stores or processes orders for retail sales subject to tax under this chapter for sale by
95 such marketplace sellers, and directly or indirectly collects payment from a purchaser and remits
96 payment to a marketplace seller.

97 “(h-1c) “Marketplace seller” means any person that makes retail sales through a
98 marketplace operated by a marketplace facilitator.”.

99 (3) Subsection (h-2) is repealed.

100 (4) Subsection (l) is amended as follows:

101 (A) Paragraph (2) is amended by striking the phrase “; and” and inserting
102 “;” in its place.

103 (B) Paragraph (3) is amended by striking the phrase “consumption.” and
104 inserting the phrase “consumption; and” in its place; and

105 (C) New paragraphs (4) and (5) are added to read as follows:

106 “(4) Every marketplace facilitator; and

107 “(5) Every marketplace seller.”

108 (5) Subsection (n) is amended as follows:

109 (A) The lead in language to paragraph (1) is amended by striking the phrase

110 “by a nexus-vendor”.

111 (B) A new subparagraph(1)(AB) is added to read as follows:

112 “(AB) The sale of or charges for digital goods.

113 (C) Subparagraph(2)(C) is amended by striking the phrase “and is not sold

114 by a nexus-vendor”.

115 (D) Subparagraph(2)(F) is amended by adding an additional sub-

116 subparagraph (iv) to read as follows:

117 “(2)(F)(iv) “Internet access service” shall not include digital goods as defined in §

118 47-2001(d-1)(1).”

119 (6) Subsection (w) is amended as follows:

120 (A) The existing text is designated as paragraph (1).

121 (B) The new paragraph (1) is amended by striking the phrase “, including a

122 nexus vendor,”.

123 (C) A new paragraph (2) is added to read as follows:

124 “(2) The term vendor shall include any person or retailer who does not have a

125 physical presence in the District, provided the person or retailer meets either of the

126 following criteria in the previous calendar year or the current calendar year:

127 “(A) The person or retailer’s gross receipts from all retail sales delivered
128 into the District exceeds one hundred thousand dollars; or
129 “(B) The person or retailer made two hundred or more separate retail sales
130 delivered in the District.”.

131 Sec. 4. Chapter 22 of Title 47 of the District of Columbia Official Code is amended as
132 follows:

133 (a) Section 47-2201(a)(1) is amended by adding a new subparagraph (R) to read as follows:

134 “(R) The sale of or charges for digital goods as defined in
135 § 47-2001(d-1).”.

136 Sec. 5. Chapter 25 of Title 47 of the District of Columbia Official Code is amended as
137 follows:

138 (a) Section 47-2501.01(a) is amended to read as follows:

139 “(a) “Before the 21st day of each calendar month, each company that sells or charges for
140 cable television service, satellite relay television service, and any and all other distribution of
141 television, video, or radio service (other than sales of digital goods as defined in § 47-2001(d-1)
142 and subject to tax pursuant to § 47-2001(n)(1)(AB) and/or § 47-2201(a)(1)(R)) with or without
143 the use of wires provided to subscribers or paying customers, whether for basic service, ancillary
144 service, or other special service, and any other charges related to providing the services within
145 the District of Columbia, including, but not limited to, rental of signal receiving equipment,
146 shall:

147 “(1) File an affidavit with the Mayor indicating the amount of its gross receipts
148 for the preceding calendar month from the sale of or charges for the services within the District;

149 “(2) Until May 31, 1994, pay to the Mayor 9.7% of these gross receipts; and

150 “(3) After May 31, 1994, pay to the Mayor 10.0% of its gross receipts from sales
151 included in bills rendered after May 31, 1994.”

152 Sec. 6. The Internet Sales Tax, Homelessness Prevention, and WMATA Momentum Fund
153 Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §
154 47-3931 *et seq.*) is repealed.

155 Sec. 7. Fiscal impact statement.

156 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
157 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
158 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

159 Sec. 8. Applicability Date

160 Sections 3, 4, 5 and 6 of this act shall be applicable on January 1, 2019.

161 Sec. 9. Effective date.

162 This act shall take effect following approval by the Mayor (or in the event of veto by the
163 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
164 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
165 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
166 Columbia Register.



Independent Research. Poverty Solutions. Better DC Government.

**Testimony of Ed Lazere, Executive Director
At the Public Hearing on
Bill 22-914, The Internet Sales Tax Act of 2018
DC Council Committee on Finance and Revenue
October 10, 2018**

Chairman Evans and members of the committee, thank you for the opportunity to submit this written testimony. My name is Ed Lazere, and I am the Executive Director of the DC Fiscal Policy Institute. DCFPI is a non-profit organization that promotes budget choices to reduce economic and racial inequality and build widespread prosperity in the District of Columbia through independent research and thoughtful policy recommendations.

The proposed Internet Sales Tax Act takes important steps to ensure that DC's sales tax applies to online retail purchases as broadly as possible, following a recent U.S. Supreme Court decision, *South Dakota v. Wayfair*. That decision eliminated long-standing restrictions against requiring retailers without a local presence to collect sales taxes. The Supreme Court decision is an important step in catching up with the reality that online sales are now commonplace and a growing share of all sales. Levying the sales tax on online purchases is critical to ensuring the viability of sales taxes as a revenue source for states and localities, and it supports fair treatment between online retailers and local brick-and-mortar retailers by ensuring that both collect sales taxes.

DCFPI therefore supports the provisions of the Internet Sales Tax Act to extend the sales tax to online and other remote purchases, in line with what is now allowed following the Supreme Court decision. We support any technical modifications proposed by the DC Chief Financial Officer needed to implement the bill in accordance with the Supreme Court decision and to align the sales tax expansion with DC's current sales tax administrative structure.

The DC Chief Financial Officer estimates this will raise \$20 million per year. It is worth noting that DC already receives sales taxes from a notable share of online sales. This is because some online purchases made by DC residents are from companies that have a local presence, like Home Depot. Federal law has always mandated that online retailers collect sales tax when they also have a local presence in a jurisdiction. In addition, some retailers—most notably Amazon—have chosen to collect sales tax on all sales in the U.S., even in communities where they have no local presence.

New Sales Tax Revenue Should Be Used to Fund Services, Not Cut Taxes

Expanding the DC sales tax more completely to online sales will create an important new source of revenue for the District, without having to raise any tax rates. This new revenue thus is an opportunity to make investments that will help DC residents and strengthen the city.

Unfortunately, the Internet Sales Tax Amendment Act that would use the new revenue to cut taxes, by reducing the commercial property tax for properties worth more than \$10 million.

DCFPI strongly opposes this provision, for two reasons.

First, the commercial property tax was increased in the FY 2019 budget as part of the effort to provide DC's share of a regional \$500 million annual investment in Metro's capital needs. DCFPI has long argued that because both residents and businesses benefit from a strong public transportation system, the cost of repairing Metro should be shared broadly, including among businesses and residents.¹ Scaling back the commercial property tax increase would inappropriately reduce the business community's responsibility for repairing Metro. Given that the commercial property tax increase is less than one-fourth of DC's \$178 million new commitment to Metro, there is no reason compelling reason to reduce the business community's obligation.

Second, the \$20 million in additional sales tax revenue could be better used to address urgent needs for DC residents, including schools, housing, homeless services, and health care. The District has tremendous needs in all of these areas, particularly to address DC's large and growing economic and racial inequities. The median household income for Black households is just \$42,000 per year, and has not increased amidst 10 years of strong economic growth, according to a recent DCFPI analysis.² Meanwhile, median white household income is over three times higher—\$134,000—and has grown notably over the last decade. The gap in wealth, or net assets, between Black and white residents is even wider. These figures remind us that the District should do more to ensure that all residents share in the city's growing prosperity.

The \$20 million in additional revenues could be put to use in the following important ways.

- \$20 million would increase the Housing Production Trust Production Trust Fund by 20 percent.
- \$20 million would provide rental assistance for 1,000 extremely low-income households.
- \$20 million would provide Permanent Supportive Housing to over 700 individuals facing chronic homelessness.
- \$20 million would enable over 5,000 residents to access healthcare through the DC Healthcare Alliance program, by eliminating current barriers that make it hard for eligible residents to remain on the program.
- \$20 million would nearly cover the cost of implementing the next step in the Birth to Three for All in DC Act that was adopted this year by the DC Council, but not funded. The FY 2020 increase under the law would support an increase in child care subsidies and increases in the very low pay of workers in the early childhood education workforce.
- \$20 million would be enough to implement the Student Fair Access to Education Act, which calls for eliminating punitive and discriminatory school discipline practices and replacing them with more positive student supports.

Thank you for the chance to submit this testimony.

¹ *Triple Whammy: A Sales Tax for Metro, Like Fare Increases and Service Cuts, Would Fall Hardest on Struggling Families*, DC Fiscal Policy Institute, Maryland Center on Economic Policy, and Commonwealth Institute for Fiscal Analysis, August 2017.

² *DC's Growing Prosperity Is Not Reaching Black Households, Census Data Show*, DC Fiscal Policy Institute, September 26, 2018

④

Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: November 7, 2018

SUBJECT: Fiscal Impact Statement – Internet Sales Tax Amendment Act of 2018

REFERENCE: Bill 22-914, Committee Print provided to the Office of Revenue
Analysis on November 5, 2018

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bill will increase sales tax revenue beginning in fiscal year 2019, generating a total of \$96.9 million during the financial plan period. Beginning in FY 2020, the bill will result in an estimated three-cent reduction in the Class 2 commercial property tax rate of properties with an assessed value over \$10 million, leaving a net increase in General Fund revenue of \$14.3 million in fiscal year 2019 and approximately \$21 million over the four-year financial plan. Finally, the bill dedicates the fiscal year 2019 revenue to the Commission on Arts and Humanities, providing net local source revenue of \$0 in fiscal year 2019 and \$6.7 million over the four-year financial plan. The revenue dedicated to the Commission on Arts and Humanities must be included in an approved budget and financial plan before it can be spent by the agency.

Background

In June 2018, the United States Supreme Court upheld¹ a South Dakota law that imposed tax collection and reporting requirements on large out-of-state retailers.² The ruling allows all jurisdictions to require sales tax to be collected on transactions delivered into their jurisdiction regardless of a seller's physical presence in that jurisdiction. Prior to the ruling, a seller could only be required to collect and remit sales tax to a jurisdiction if the seller had a physical presence in that jurisdiction.

¹ *South Dakota v. Wayfair, Inc.* 138 S. Ct. 2080, 201 L. Ed. 2d 403 (2018), https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf (last accessed November 5, 2018).

² The South Dakota law included a small seller exemption. See *Wayfair* at 2099.

The Honorable Phil Mendelson

FIS: "Internet Sales Tax Amendment Act of 2018," Bill 22-914, Committee Print provided to the Office of Revenue Analysis on October 31, 2018.

The bill expands the District's sales tax collection requirements to vendors who do not have a physical presence in the District. The definition of vendor is also expanded to make clear that marketplace facilitators, or third-party sales sites, are also required to collect and remit District sales tax, regardless of whether the marketplace facilitator receives compensation for its services. The bill exempts from the sales tax collection requirement for out of state vendors that do not exceed \$100,000 in annual gross receipts from all retail sales into the District and do not exceed 199 total annual retail sale transactions delivered into the District.³ This exemption is modeled after the South Dakota law.

The bill also clarifies the application of the sales tax to products delivered electronically to include digital goods. It defines the following categories of digital goods as subject to the sales tax: digital audiovisual works (including videos, news and entertainment programs), digital audio works (including books, ringtones or other recordings), digital books, digital code (such as a promotional code that is used to obtain any other digital good), digital applications and games, whether it is downloaded, streamed, purchased singly or by subscription. Streaming video currently taxed under gross receipts tax will be taxed as retail sales, reducing the tax rate on those transactions.

Beginning in fiscal year 2020, the bill dedicates most of the new sales tax revenue identified by the OCFO as additional revenue generated by the bill to reducing the Class 2 commercial property tax rate on properties with an assessed value greater than \$10 million, until such time as revenue is sufficient to reduce the rate from \$1.89 per \$100 of assessed property value to \$1.85 per \$100 of assessed property value. Provided the revenue generated by the bill is not necessary to maintain an overall balanced financial plan, the fiscal year 2020 property tax rate will be reduced to the nearest penny by the amount of internet sales tax certified in the February 2019 quarterly revenue estimate. If there are insufficient revenues to lower the rate to \$1.85 in fiscal year 2020, then the same calculation will be made in all future February quarterly revenue estimates, until such time as the rate reaches \$1.85. (Currently we estimate revenues will be sufficient to lower the rate to \$1.86 in fiscal year 2020.) Revenue generated in fiscal year 2019 will be dedicated to the Commission on the Arts and Humanities, and any revenue not used to lower the rate to the nearest penny in future fiscal years will go to the local source revenue component of the General Fund.

The bill will be effective as of January 1, 2019 for most vendors, but April 1, 2019 for marketplace facilitators.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. We estimate the bill will generate sufficient new sales tax revenue to fund a three-cent decrease in the Class 2 commercial property tax rate for properties with an assessed value greater than \$10 million, lowering it to \$1.86 per \$100 assessment beginning fiscal year 2020. However, the rate change will be based on the February 2019 quarterly revenue estimate, so the final rate change could differ from this estimate. We estimate the bill will also generate \$14.3 million in revenue in FY 2019. The FY 2019 revenue has been dedicated to the Commission on the Arts and Humanities, leaving a net increase in local source revenue of \$6.7 million in fiscal years 2020 through 2022.

³ Transactions through a marketplace facilitator will be taxable regardless of the retailer size if the marketplace facilitator is not a small seller.

The Honorable Phil Mendelson

FIS: "Internet Sales Tax Amendment Act of 2018," Bill 22-914, Committee Print provided to the Office of Revenue Analysis on October 31, 2018.

Fiscal Impact of Bill 22-914 Internet Sales Tax Amendment Act of 2018					
Fiscal Year 2019 – Fiscal Year 2022					
(\$ thousands)					
	FY 2019	FY 2020	FY 2021	FY 2022	Total
Increased sales tax revenue ^(a)	\$14,336	\$25,299	\$27,475	\$29,837	\$96,947
Decreased Class 2 property tax revenue by lowering rate to \$1.86 for assessments over \$10 million	\$0	(\$24,668)	(\$25,291)	(\$25,923)	(\$75,883)
Revenue dedicated to the Commission on the Arts and Humanities	(\$14,336)	\$0	\$0	\$0	(\$14,336)
Net increase to Local Source Revenue in the General Fund	\$0	\$631	\$2,183	\$3,914	\$6,728

^(a) This revenue is net of reduction in gross receipts tax for streaming video.




OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Jack Evans

FROM: Nicole L. Streeter, General Counsel 

DATE: November 6, 2018

RE: Legal sufficiency determination for Bill 22-914, the
Internet Sales Tax Amendment Act of 2018

The measure is legally and technically sufficient for Council consideration.

The measure amends Title 47 of the District of Columbia Official Code to provide that from January 1, 2019, through September 30, 2019, the additional recurring annual revenue collected as a result of increased internet sales tax revenue shall be directed to the Commission on the Arts and Humanities and, beginning October 1, 2019, and each fiscal year thereafter, used to reduce the commercial real property tax rate. Further, the measure clarifies that a person or retailer without a physical presence is a vendor¹ and makes other clarifying amendments relating to internet sales, including the repeal of obsolete provisions.²

I am available if you have any questions.

¹§ 47-2001(w) "Vendor" includes a person or retailer selling property or rendering services upon the receipts from which a tax is imposed under this chapter, including a person or retailer that does not have a physical presence in the District that in the previous calendar year or the current calendar year had gross receipts from all retail sales delivered into the District that exceeds \$100,000 or 200 or more separate retail sales delivered into the District. [as amended by Bill 22-914]

² Chapter 39A (§§ 47-3931 through 47-3934) authorized the District to impose taxation on remote [internet] sales upon the applicability of the Marketplace Fairness Act of 2013, passed by the Senate on May 6, 2013 (S. 743).

⑦

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

47-812. Establishment of rates. [47-812(b-9)(2)]

(b-9)(1) Notwithstanding the provisions of subsection (a) of this section, the sum of the real property tax rates and special real property tax rates for taxable Class 2 Properties in the District of Columbia for the tax year beginning October 1, 2008, shall be:

(A) For the first \$3 million of assessed value, \$1.65 of each \$100 of assessed value; and

(B) For the portion of the assessed value exceeding \$3 million, \$1.85 of each \$100 of assessed value.

(2)(A) Notwithstanding the provisions of subsection (a) of this section, the sum of the real property tax rates and special real property tax rates for taxable Class 2 Property in the District of Columbia for the tax year beginning October 1, 2009, and each tax year thereafter, shall be:

(i) For the first \$3 million of assessed value, the rate as established in subparagraph (B) of this paragraph; provided, that for the tax year beginning October 1, 2011, the tax rate shall be \$1.65 of each \$100 of assessed value; and

(ii) For the portion of the assessed value exceeding \$3 million, \$1.85 of each \$100 of assessed value.

(B)(i) The Chief Financial Officer shall compute the real property tax rate for the first \$3 million of assessed value for taxable Class 2 Properties in the District of Columbia, for the tax year beginning October 1, 2009, as follows:

(I) The Chief Financial Officer shall subtract \$1,312,793,900 from the estimated real property taxes to be collected for Class 2 Properties based upon a rate of \$1.85 of each \$100 of assessed value.

(II) The Chief Financial Officer shall compute the real property tax rate (rounded up to the nearest penny) for the first \$3 million of assessed value for taxable Class 2 Properties by taking the amount yielded by sub-sub-subparagraph (I) of this sub-subparagraph and, if it is a positive number, applying this amount to reduce the real property tax rate; provided, that the real property tax rate shall not be less than \$.90 of each \$100 of assessed value.

(ii) The Chief Financial Officer shall compute the real property tax rate for the first \$3 million of assessed value for taxable Class 2 Properties in the District of Columbia, for the tax year beginning October 1, 2010, and each tax year thereafter, as follows:

(I) The Chief Financial Officer shall multiply the total amount of taxes estimated to be received for taxable Class 2 Properties in the District of Columbia for the prior fiscal year by 110%.

(II) The Chief Financial Officer shall subtract the amount yielded by sub-sub-subparagraph (I) of this sub-subparagraph from the estimated real property taxes to be collected in the tax year based upon the applicable rates in effect for Class 2 Properties during the prior tax year.

(III) The Chief Financial Officer shall compute the real property tax rate (rounded up to the nearest penny) for the first \$3 million of assessed value for taxable Class 2 Properties by taking the amount yielded by sub-sub-subparagraph (II) of this sub-subparagraph and, if it is a positive number, applying this amount to reduce the real property tax rate; provided, that the real property tax rate shall not be less than \$.90 of each \$100 of assessed value.

(iii) By January 5 of each tax year, the Chief Financial Officer shall submit to the Council the real property tax rate computed under this subparagraph.

(3) The real property tax rate computed in paragraph (2) of this subsection shall only reduce the real property tax rate. If revenues increase by less than the amount needed to reduce the real property tax rate, the real property tax rate shall be equal to the real property tax rate of the prior fiscal year.

(C) Notwithstanding any other provision of this section, the sum of the real property tax rates and special real property tax rates for taxable Class 2 Properties in the District of Columbia beginning October 1, 2018, and each tax year thereafter shall be:

(i) \$1.65 for each \$100 of assessed value if the real property's assessed value is not greater than \$5 million;

(ii) \$1.77 for each \$100 of assessed value if the real property's assessed value is greater than \$5,000,000 but not greater than \$10 million; or

(iii) ~~\$1.89~~ Except as provided in subparagraph (D) of this paragraph, \$1.89 for each \$100 of assessed value if the real property's assessed value is greater than \$10 million".

BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE

(D)(i) Notwithstanding subparagraph (C)(iii) of this paragraph, and except as provided in subparagraph (ii) of this subparagraph, for the tax year beginning October 1, 2019, and each tax year thereafter, the recurring annual revenue collected pursuant to the Internet Sales Tax Amendment Act of 2018, as introduced July 9, 2018 (Bill 22-914) ("IST revenue" as certified by the Chief Financial Officer in the quarterly revenue estimate issued in February 2019, and each February thereafter, shall, to the extent the IST revenue is in excess of that required for the financial plan for the current fiscal year ("excess IST revenue"), reduce the property tax rate under subparagraph (C)(iii) of this paragraph, as determined at the time of the February quarterly revenue estimate, to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value; provided, that the rate is no less than \$1.85 per \$100 of assessed value; provided further, if the tax rate remains greater than \$1.85 per \$100 of assessed value, for the tax year beginning October 1, 2020, and each tax year thereafter, the excess IST revenue shall reduce the property tax rate to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value that is at least \$1.85 per \$100 of assessed value.

(ii) For the period beginning on January 1, 2019, through September 30, 2019, IST revenue shall be directed to the Commission on the Arts and Humanities, established by the Commission on the Arts and Humanities Act, effective January 29, 1998 (D.C. Law 12-42; D.C. Official Code §39-201, *et. seq.*, to support the functions, purposes, and costs of the Commission.

§47-2001. Definitions.

(a) Repealed.

(a-1) "Additional charges" means the excess of the gross receipts from the sale of or charges for any room or accommodations received by a room remarketer over the net charges.

(a-2) "Armored car service" means picking up and delivering money, receipts, or other valuable items with personnel and equipment to protect the properties while in transit. The term "armored car service" shall not include coin rolling or change-room services; provided, that these charges are separately stated.

(b) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

(b-1) "Cigar" means any roll for smoking, other than a cigarette as defined in § 47-2401(1) [§ 47-2401(1A)], made wholly or in part of tobacco, and where the wrapper or cover of the roll is made of natural leaf tobacco or any substance containing tobacco.

(c) "Collector" means the Collector of Taxes of the District or his duly authorized representatives.

(d) "Mayor" means the Mayor of the District of Columbia or his duly authorized representative or representatives.

(d-1) (1) "Digital Goods" means digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, and any other otherwise taxable tangible personal property electronically or digitally delivered, whether electronically or digitally delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other manner, including maintenance, updates, and support. The term "digital goods" does not include cable television service, satellite relay television service, or any other distribution of television, video, or radio service subject to tax under §47-2501.01, unless expressly included in the definition of digital goods under paragraph (1) of this subsection.

(2) For the purposes of this subsection the term:

(A) "Digital audiovisual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds. "Digital audiovisual works" includes motion pictures, musical, videos, news and entertainment programs, and live events.

(B) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or livesongs, music, readings of books or other written materials, speeches, ringtones, or other sound recording.

(C) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction, nonfiction, and short stories.

BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE

(D) "Digital code" means a code that provides the person who holds the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital book that may be obtained by any means, including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code. Term "digital code" includes codes used to access or obtain any specified digital goods, or any additional digital goods that have been previously purchased, and promotion cards or codes that are purchased by a retailer or business entity for use by the retailer's or entity's customers.

(E) "Digital applications and games" mean any application or game, including add-ons, or additional content that can be used by a computer, mobile device, or tablet notwithstanding the function performed.

(e) "District" means the District of Columbia.

(e-1) [Repealed].

(f) "Engaging in business" means commencing, conducting, or continuing in business, as well as liquidating a business when the liquidator thereof holds himself out to the public as conducting such a business.

(g) "Food or drink" means items sold for human or animal ingestion that are consumed for their taste or nutritional value. These items include, but are not limited to, baby foods and formula; baked goods; baking soda, baking powder, and baking mixes; bouillon; cereal and cereal products; cocoa and cocoa products; coffee and coffee substitutes; condiments; cooking wines; cough drops; edible cake decorations; egg and egg products; fish and fish products, including shellfish; fruit, fruit products, and fruit juices; gelatin; honey; ice cream; meat and meat products; milk and milk products; nondairy creamers; oleomargarine; pasta and pasta products; poultry and poultry products; powdered drinks, including health and diet drinks; salad dressings; salt and salt substitutes; sauces and gravies; snack foods; soups; spices and herbs; sugar and sugar products; syrup and syrup substitutes; tea and tea substitutes; vegetables, vegetable products, and vegetable juices; vitamins; water; yogurt; pet foods; flavored extracts; ice; and any combination of these items. The term "food or drink" does not include spirituous or malt liquors, beers, and wines; drugs, medicines or pharmaceuticals; chewing tobacco; toothpaste; or mouthwash.

(g-1) "Food or drink prepared for immediate consumption" includes, but is not limited to, food or drink in a heated state (except heated baked goods whose heated state is solely a result of baking); sandwiches suitable for immediate consumption; prepared salads; salad bars; party platters; cold drinks dispensed in or with a cup or glass either by a retailer or on a self-service basis by the consumer; frozen yogurt, ice cream, or ice milk sold in quantities of less than one pint; and all food or drink, served by, or sold in or by, restaurants, lunch counters, cafeterias, hotels, caterers, boarding houses, carryout shops or like places of business.

(g-2) Repealed.

(h) (g-3) "Gross receipts" means the total amount of the sales prices of the retail sales of vendors, valued in money, whether received in money or otherwise.

(g-4) "Marketplace" means a physical or electronic place, including a store, a booth, an internet web site, a catalogue, or a dedicated sales software application, where a retail sale, as defined in subsection (n) of this section, occurs.

(g-5) "Marketplace facilitator" means a person who provides a marketplace that lists, advertises, stores, or processes orders for retail sales subject to tax under this chapter for sale by such marketplace sellers, and directly or indirectly collects payment from a purchaser and remits payment to a marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

"(h) "Marketplace seller" means a person that makes retail sales through a marketplace operated by a marketplace facilitator."

(h-1) "Net charges" means the gross receipts from the sale of or charges for any room or accommodations received from a room remarketer by the operator of a hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

~~(h-2) “Nexus vendor” means a vendor that has a physical presence within the District of Columbia, such as property or retail outlets, selling via the internet property or rendering services to a purchaser in the District.~~

~~(h-3) [Repealed].~~

(i) “Person” includes an individual, partnership, society, club, association, joint-stock company, corporation, estate, receiver, trustee, assignee, or referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals acting as a unit.

(i-1) “Premium cigar” means any cigar with a retail cost of \$ 2.00 or more, or packaged units of cigars averaging \$ 2.00 or more per packaged cigar at retail.

(i-2)(1) “Private investigation service” means an investigation being conducted for purposes of providing information related to:

(A) A crime or wrong committed, assumed to have been committed, or threatened to be committed;

(B) The identity, habits, conduct, movement, location, affiliations, associations, transactions, reputation, or character of any person;

(C) The credibility of a witness or of any other individual;

(D) The location of a missing individual;

(E) The location or recovery of lost or stolen property;

(F) The origin, cause of, or responsibility for a fire, accident, damage to or loss of property, or injury to an individual, regardless of who conducts the investigation;

(G) The affiliation, connection, or relation of any person with an organization or other person;

(H) The activities, conduct, efficiency, loyalty, or honesty of any employee, agent, contractor, or subcontractor;

(I) The financial standing, creditworthiness, or financial responsibility of any person;

(J) Securing evidence for use before any investigating committee, board of award, or board of arbitration, or for use in a trial of any civil or criminal cause;

(K) Providing uniformed or non-uniformed personal protection;

(L) Conducting polygraph testing;

(M) Conducting background checks on prospective employees or tenants; or

(N) Conducting background checks on individuals by or at the request of an insurance company for workers’ compensation purposes.

(2) The term “private investigation service” shall not include private-process service, unless the service goes beyond service of process to a missing person investigation.

(j) “Purchaser” includes a person who purchases property or to whom is rendered services, receipts from which are taxable under this chapter.

(k) “Purchaser’s certificate” means a certificate signed by a purchaser and in such form as the Mayor shall prescribe, stating the purpose to which the purchaser intends to put the subject of the sale, or the status or character of the purchaser.

(l) “Retailer” includes:

(1) Every person engaged in the business of making sales at retail;

(2) Every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others; ~~and;~~

(3) Every person engaged in the business of making sales for storage, use, or other consumption, or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other ~~consumption~~; consumption; and

(4) Every marketplace facilitator; and

(5) Every marketplace seller.

(m) “Retail establishment” means any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made.

(n)(1) “Retail sale” and “sale at retail” mean the sale in any quantity or quantities of any tangible personal property or service, including any such sales effected via the internet by ~~a nexus vendor~~, taxable

BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE

under the terms of this chapter. These terms mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but not be limited to, the following:

(A)(i) Sales of food or drink prepared for immediate consumption as defined in subsection (g-1) of this section; and

(ii) Sales of food or drink when sold from vending machines;

(iii) Repealed;

(iv) Sales of soft drinks.

(B) Any production, fabrication, or printing of tangible personal property on special order for a consideration;

(C) The sale or charge, to include net charges and additional charges, for any room or rooms, lodgings, or accommodations furnished to transients by any hotel, room remarketer, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.

(D) The sale of natural or artificial gas, oil, electricity, solid fuel, or steam;

(E) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold, however, this section shall not apply to the sale of material for the purpose of subsequently transporting the property outside the District for use solely outside the District;

(F) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event, for the purposes of this chapter, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid; provided, however, that the gross proceeds from the rental of films, records, or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale;

(G)(i) The sale of or charges to subscribers for local telephone service. The inclusion of such sales and charges in the definition of the terms "retail sale" and "sale at retail" shall not authorize any tax to be imposed under this chapter on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

(ii) The term "local telephone service" means:

(I) The access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system; and

(II) Any facility or service provided in connection with a service described in clause (I) of this sub-subparagraph. The term "local telephone service" does not include any service which is a "toll telephone service" or a "private communication service" as defined in sub-subparagraphs (iii) and (iv) of this subparagraph.

(iii) The term "toll telephone service" means:

(I) A telephonic quality communication for which there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and the charge is paid within the United States; and

(II) A service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

(iv) The term "private communication service" means:

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

(I) The communication service furnished to a subscriber which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the use of an intercommunication system for the subscriber's stations, regardless of whether such channel, or groups of channels, or intercommunication system may be connected through switching with a service described in sub-subparagraph (ii) or (iii) of this subparagraph;

(II) Switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of, channels, or systems described in clause (I) of this sub-subparagraph; and

(III) The channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system, except that such term does not include any communication service unless a separate charge is made for such service;

(H) The sale of or charges for admission to public events, except live performances of ballet, dance, or choral performances, concerts (instrumental and vocal), plays (with and without music), operas and readings and exhibitions of paintings, sculpture, photography, graphic and craft arts, but including movies, circuses, burlesque shows, sporting events, and performances or exhibitions of any other type or nature; provided, that any casual or isolated sale of or charge for admission made by a semipublic institution not regularly engaged in asking such sales or charges shall not be considered a retail sale or sale at retail;

(I) The sale of or charges for the service of repairing, altering, mending, or fitting tangible personal property, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property, whether or not such service is performed by other means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction with such service;

(J) The sale of or charges for copying, photocopying, reproducing, duplicating, addressing, and mailing services and for public stenographic services;

(K) The sale of or charges for the service of laundering, dry cleaning, or pressing of any kind of tangible personal property, except when such service is performed by means of self-service, coin-operated equipment, and the rental of textiles to commercial users when the essential part of the rental includes the recurring service of laundering or cleaning thereof;

(L) The sale of or charge for the service of parking, storing, or keeping motor vehicles or trailers, except that:

(i) Where a sale or charge for the service described in this subparagraph is made to a District resident who is a tenant in an apartment house or the owner of a condominium unit or a cooperative unit in which he or she resides, and the motor vehicle or trailer of the tenant or owner is parked, stored or kept on the same premises on which the tenant or owner has his or her place of residence, except as otherwise provided in this paragraph the sale or charge is exempt from the tax imposed by this subparagraph. The exemption shall not extend to a tenant or owner whose motor vehicle or trailer is used for commercial purposes or whose occupancy of the building is for commercial purposes; or

(ii)(I) Where the sale or charge for the service is made to a District resident who possesses and shows to those providing the service a parking sales tax exemption card issued and signed by the Mayor or his or her duly authorized representative pursuant to sub-subparagraph (iii) of this subparagraph, the sale or charge is exempt from the tax imposed by this paragraph;

(II) This exemption shall extend only to those District residents using the service for the purpose of keeping their vehicles or trailers near their place of residence and shall not extend to a resident whose motor vehicle or trailer is used for commercial purposes, as ascertained by the Mayor or his or her duly authorized representative;

(iii) Upon application by a District resident, the Mayor shall issue to him or her a parking sales tax exemption card; provided, that the resident:

(I) Possesses a District motor vehicle or trailer registration certificate and identification tag for the motor vehicle or trailer to be parked, if so required by § 50-1501.02(a);

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

(II) Has registered the vehicle or trailer to a residential address in the District, if a registration certificate is required by § 50-1501.02(a), which address is located within one-half mile of the address of the business or operation providing the service; and

(III) Provides the Mayor the name and address of the business or operation to provide the service;

(iv) The parking sales tax exemption card shall state the name and address of the person to whom it is issued, the name and address of the business or operation to provide the service, and any other information, including a photograph, deemed necessary by the Mayor;

(iv-I)(I) Where the sale or charge for service is made by a valet parking service business, the sale or charge for service shall be exempt from the tax imposed by this sub-subparagraph.

(II) For the purposes of this sub-subparagraph, the term “valet parking service business” means a corporation, partnership, business entity, or proprietor who takes temporary control of a motor vehicle of a person attending any restaurant, business, activity, or event to park, store, or retrieve the vehicle. The term “valet parking service business” shall not include a garage, parking lot, or parking facility that provides parking services by parking lot attendants.

(v) For the purpose of this paragraph, the term:

(I) “Motor vehicle” means any vehicle propelled by an internal-combustion engine or by electricity or steam, except road rollers, farm tractors, and vehicles propelled only upon stationary rails or tracks; and

(II) “Trailer” means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle;

(M) The sale of or charges for the service of real property maintenance and landscaping.

(i)(I) For the purposes of this paragraph, the term “real property maintenance” means any activity that keeps the land or the premises of a building clean, orderly, and functional, including the performance of minor adjustments, maintenance, or repairs which include: floor, wall, and ceiling cleaning; pest control; window cleaning; servicing inground and in building swimming pools; exterior building cleaning; parking lot, garage, and recreation area maintenance; exterior and interior trash removal; restroom cleaning and stocking; lighting maintenance; chimney and duct cleaning; and ground maintenance; but does not include; painting, wallpapering, or other services performed as part of construction or major repairs; or services performed under an employee-employer relationship.

(II) The term “real property maintenance” shall not include the exterior or interior trash removal of recyclable material. For the purposes of this sub-sub-subparagraph, the term “recyclable material” means material that would otherwise become municipal solid waste and is shown by the provider of the interior or exterior trash removal that the material has been collected, separated, or processed to be returned into commerce as a raw material or product, or has been sold to a company in the business of separating or processing recyclable materials.

(ii) For the purposes of this paragraph, the term “landscaping” means the activity of arranging or modifying areas of land and natural scenery for an improved or aesthetic effect; the addition, removal, or arrangement of natural forms, features, and plantings; the addition, removal, or modification of retaining walls, ponds, sprinkler systems, or other landscape construction services; and other services provided by landscape designers or landscape architects such as consultation, research, preparation of general or specific design or detail plans, studies, specifications or supervision, or any other professional services or functions associated with landscaping;

(N) The sale of or charges for data processing and information services.

(i) For the purposes of this paragraph, the term “data processing service” means the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment; the specification of computer hardware configurations, the evaluation of technical processing characteristics, computer programming or software, provided in conjunction with and to support the sale, lease, operation, or application of computer equipment or systems; word processing, payroll and business accounting, and computerized

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

data and information storage and manipulation; the input of inventory control data for a company; the maintenance of records of employee work time; filing payroll tax returns; the preparation of W-2 forms; the computation and preparation of payroll checks; and any system or application programming or software.

(ii) For the purposes of this paragraph, the term "information service" means the furnishing of general or specialized news or current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by wire, cable, radio waves, microwaves, satellite, fiber optics, or any other method in existence or which may be devised; electronic data retrieval or research, including newsletters, real estate listings, or financial, investment, circulation, credit, stock market, or bond rating reports; mailing lists; abstracts of title; news clipping services; wire services; scouting reports; surveys; bad check lists; and broadcast rating services; but does not include: information sold to a newspaper or a radio or television station licensed by the Federal Communication Commission, if the information is gathered or purchased for direct use in newspapers or radio or television broadcasts; charges to a person by a financial institution for account balance information; or information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled.

(iii) The term "data processing services" does not include a service provided by a member of an affiliated group of corporations to other corporate members of the group. Data processing services shall be exempt from sales tax if the service is rendered by a member of the affiliated group of corporations, has not been purchased with a certificate of resale or exemption by the corporation that provides the service, is rendered for the purpose of expense allocation, and is not for the profit of the corporation providing the service. For the purposes of this sub-subparagraph, the term "affiliated group" shall have the same meaning as defined in 26 U.S.C. § 1504(a);

(O) The sale of or charge for any newspaper or publication;

(P)(i) The sale of or charges for stationary two-way radio services, telegraph services, teletypewriter services, and teleconferencing services. The sale of or charges for services listed in this subparagraph shall not be considered sales of or charges for private communication services as defined in subparagraph (G)(iv) of this paragraph;

(ii) The sale of or charges for "900", "976", "915", and other "900"-type telecommunication services;

(iii) The sale of or charges for telephone answering services, including automated services and services provided by human operators;

(iv) The sale of or charges for telephone services rendered by means of coin-operated telephones; and

(v) The sale of or charges for services enumerated in sub-subparagraphs (i) through (iv) of this subparagraph shall not include sales of or charges for services that are subject to tax under § 47-2501 or Chapter 39 of this title;

(Q) The sale of or charge for any delivery in the District for which a separate charge is made, except merchandise delivered for resale for which a District of Columbia certificate of resale has been issued or the delivery of any newspapers;

(R) The sale of or charge for the service of procuring, offering, or attempting to procure in the District job seekers for employers or employment for job seekers, including employment advice, counseling, testing, resume preparation and any other related services;

(S) The sale of or charge for the service of placing a job seeker with an employer in the District;

(T) The sale of a prepaid telephone calling card, even if no card has been issued. Notwithstanding any other provision of law, any sale of a prepaid telephone calling card on or after October 1, 1997, shall be deemed the sale of tangible personal property subject only to such taxes as are imposed on the sale of food for immediate consumption as defined under subsection (g-1) of this section, even where no card has been issued. Gross receipts or charges from the sale of the telecommunication service purchased through the use of a prepaid telephone calling card, even if no card has been issued, shall not be subject to the taxes imposed under § 47-2501 et seq.; or § 47-3901 et seq.;

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

(U) The sale of or charges for armored car service, private investigation service, and security service; provided, that an armored-car-services vendor may reasonably apportion any charges for any out-of-state delivery component, including the apportionment of distance, time, or number of stops within and outside of the District; provided further, that application of the sales and use tax to charges for security services is controlled by the delivery point of the services; provided further, that the reimbursement of incidental expenses paid to a third party and incurred in connection with providing a taxable private detective service shall not be included;

(V) The sale by a bottled water delivery service of bottled water by the gallon generally for use with and to be dispensed from a water cooler or similar type of water dispenser;

(W) The sale of or charge for the service of the storage of household goods through renting or leasing space for self-storage, including rooms, compartments, lockers, containers, or outdoor space, except general merchandise warehousing and storage and coin-operated lockers;

(X) The sale of or charge for the service of carpet and upholstery cleaning, including the cleaning or dyeing of used rugs, carpets, or upholstery, or for rug repair;

(Y)(i) The sale of or charge for health-club services or a tanning studio;

(ii) For the purposes of this subparagraph, the term:

(I) "Health-club services" includes the use of, access to, or membership to, an athletic club, fitness center, gym, recreational sports facilities featuring exercise and other active physical fitness conditioning or recreational sports activities including swimming, skating, or racquet sports, or other facility for the purpose of physical exercise. The term "health club services" does not include the use of facilities for non-fitness-related purposes, including room rentals, or for other services or charges covered by a separate contract with the user, such as a lease or occupancy agreement.

(II) "Tanning studio" means a business the purpose of which is to provide individuals a manmade tan, including sun tanning salons and spray tanning salons;

(Z) The sale of or charge for the service of car washing, including cleaning, washing, waxing, polishing, or detailing an automotive vehicle, except not for coin-operated self-service carwashes; or

(AA)(i) The sale of or charge for the service of a bowling alley or a billiard parlor;

(ii) For the purposes of this subparagraph, the term:

(I) "Billiard parlor" means the structure where the game of striking balls on a cloth-covered table with a cue stick for amusement and recreation takes place, including a billiard room, pool room, and pool parlor.

(II) "Bowling alley" means a structure where the game of rolling a ball down a wooden alley to knock down pins for amusement and recreation takes place, including candle-pin, duck-pin, five-pin, and ten-pin bowling; or

(BB) The sale of or charges for digital goods.

(2) The terms "retail sale" and "sale at retail" shall not include the following:

(A) Sales of transportation and communication services other than sales of data processing services, information services, local telephone service, or any service enumerated in paragraph (1)(P) of this subsection;

(B) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made, except as otherwise provided in paragraph (1) of this subsection;

(C) Any sale in which the only transaction in the District is the mere execution of the contract of sale and in which the tangible personal property sold is not in the District at the time of the execution ~~and is not sold by a nexus vendor~~; provided, however, that nothing contained in this subsection shall be construed to be an exemption from the tax imposed under Chapter 22 of this title;

(D) Sales to a common carrier or sleeping car company by a corporation all of whose capital stock is owned by 1 or more common carriers or sleeping car companies of tangible personal property, procured or acquired by such corporation outside the District, which consists of repair or replacement parts used for the maintenance or repair of any train operating principally without the District in the course of interstate commerce, or commerce between the District and a state, provided such sales are made in connection

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

with the furnishing of terminal services pursuant to a written agreement entered into before January 1, 1963;

(E) Sales of food or drink of a type that constitute “eligible foods”, as defined in 7 CFR § 271.2, or food purchased for animal ingestion, without regard to whether such food or drink is purchased with food stamps, except sales of food or drink prepared for immediate consumption and soft drinks;

(F) Sales of Internet access service—

(i) For the purposes of this subparagraph, the term “Internet access service” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of Internet access services offered to consumers.

(ii) “Internet access service” shall not include the sale of or charges for data processing and information services as defined in paragraph (1)(N)(i) and (ii) of this subsection that do not enable users to access content, information, electronic mail, or other services offered over the Internet.

(iii) “Internet access service” shall not include telecommunication services as defined in paragraph (1)(P) of this subsection or Chapter 39 of this title;

(iv) “Internet access service” shall not include digital goods as defined in § 47-2001(d-1).

(G) Sales within the District of Columbia by Qualified High Technology Companies of intangible property or services otherwise taxable as a retail sale or sale at retail, including Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, digital content, or products and services; advertising space and design; graphic design; banner advertising; subscription services; downloads from databases; services that involve the provision of strategic advice for Internet use and presence; Internet website design and maintenance services; Internet website assessment and diagnostic services; the use of proprietary content, information, and other services as part of a package of Internet advice and consulting services. This paragraph shall not apply to telecommunication service providers.

(H) Sales of valet parking services by a valet parking service business, as defined in paragraph (1)(L)(iv-I)(II) of this subsection;

(I) Fees retained by a retail establishment under [§ 8-102.03(b)(1)]; or

(J) Sales of cigarettes, as defined in § 47-2401(1A), and other tobacco product, as defined in § 47-2401(5A).

(o) “Return” includes any return filed or required to be filed as herein provided.

(o-1) “Room remarketer” means any person, other than the operator of a hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration, having any right, access, ability, or authority, through an internet transaction or any other means whatsoever, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate the transfer of rooms the occupancy of which is subject to tax under this chapter and also having any right, access, ability or authority to determine the sale or charge for the rooms, lodgings, or accommodations.

(p)(1) “Sales price” means the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(A) The cost of the property sold;

(B) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses;

(C) The cost of transportation of the property prior to its sale at retail. The total amount of the sales price includes all of the following:

(i) Any services that are a part of the sale; and

(ii) Any amount for which credit is given to the purchaser by the vendor; or

(D) Amounts charged for any cover, minimum, entertainment, or other service in hotels, restaurants, cafes, bars, and other establishments where meals, food or drink, or other like tangible personal property is furnished for a consideration.

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

(2) The term “sales price” does not include any of the following:

(A) Cash discounts allowed and taken on sales;

(B) The amount charged for property returned by purchasers to vendors upon rescission of contracts of sale when the entire amounts charged therefor are refunded either in cash or credit, and when the property is returned within 90 days from the date of sale;

(C) The amount separately charged for labor or services rendered in installing or applying the property sold, except as provided in subsection (n)(1) of this section;

(D) The amount of reimbursement of tax paid by the purchaser to the vendor under this chapter; or

(E) Transportation charges separately stated, if the transportation occurs after the sale of the property is made.

(q) “Sale” and “selling” mean any transaction whereby title or possession, or both, of tangible personal property is or is to be transferred by any means whatsoever, including rental, lease, license, or right to reproduce or use, for a consideration, by a vendor to a purchaser, or any transaction whereby services subject to tax under this chapter are rendered for consideration or are sold to any purchaser by any vendor, and shall include, but not be limited to, any “sale at retail” as defined in this chapter. Such consideration may be either in the form of a price in money, rights, or property, or by exchange or barter, and may be payable immediately, in the future, or by installments.

(q-1)(1) “Security service” shall include any activity that is performed for compensation as a security guard to protect any individual or property and provided on the premises of a person’s residential or commercial property, the service of monitoring an electronically controlled burglar or fire alarm system for any residential or commercial property located in the District, or responding to a distress call or an alarm sounding from a security system.

(2) The term “security service” shall not include:

(A) Installing a burglar or fire alarm system in commercial or residential property;

(B) Maintaining or repairing a security system for a customer;

(C) Monitoring property located entirely outside of the District, even if the equipment used to perform the monitoring service is located in the District; or

(D) Providing a medical-response system used by individuals to summon medical aid.

(r) “Semipublic institution” means any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(r-1) “Soft drink” means a non-alcoholic beverage with natural or artificial sweeteners. The term “soft drink” shall not include a beverage that:

(1) Contains:

(A) Milk or milk products;

(B) Soy, rice, or similar milk substitutes;

(C) Fruit or vegetable juice, unless the beverage is carbonated; or

(D) Coffee, coffee substitutes, cocoa, or tea; or

(2) Is prepared for immediate consumption, as defined in subsection (g-1) of this section.

(s) “Tangible personal property” means corporeal personal property of any nature.

(t) “Tax” means the tax imposed by this chapter.

(u) “Taxpayer” means any person required by this chapter to make returns or to pay the tax imposed by this chapter.

(v) “Tax year” means the calendar year, or the taxpayer’s fiscal year if it be other than the calendar year when such fiscal year is regularly used by the taxpayer for the purpose of reporting District income taxes as the tax period in lieu of the calendar year.

(w) “Vendor” includes a person or retailer, ~~including a nexus vendor~~, selling property or rendering services upon the receipts from which a tax is imposed under ~~this chapter~~, this chapter, including a person or retailer that does not have a physical presence in the District that in the previous calendar year or the current calendar year had gross receipts from all retail sales delivered into the District that exceeds \$100,000 or 200 or more separate retail sales delivered into the District.

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

(w-1)(1) "Special Event" means an uncommon, unique, noteworthy, or extra occurrence of a specific activity open to the general public that is designed, advertised, or promoted for an identified purpose to be conducted or held on a designated day or series of days, whether held outdoors, indoors, or both, in a public or private facility, at which at least 50 vendors will be present. Special events include auctions, shows, celebrations, circuses, expositions, entertainment, exhibits, fairs, festivals, fund raisers, historical re-enactments, movies, pageants, parades, and sporting events, the conduct of which has the effect, intent, or propensity to draw persons and create an atmosphere or opportunity to sell tangible personal property or services which are taxable under this chapter or Chapter 22 of this title.

(2) Special events shall not include an activity that constitutes a "qualified convention or trade show activity" as defined in section 513(d) of the Internal Revenue Code of 1986.

(x) The foregoing definitions shall be applicable whenever the words defined are used in this chapter unless otherwise required by the context.

§ 47-2002.01a. Marketplace facilitators; sales tax requirements.

Marketplace facilitators shall collect and remit sales tax on all sales the marketplace facilitator makes on its own behalf and all sales of the marketplace facilitator facilitates on behalf of marketplace sellers to customers in the District of Columbia regardless of whether the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

47-2201. Definitions.

(a)(1) "Retail sale", "sale at retail", and "sold at retail" mean all sales in any quantity or quantities of tangible personal property, whether made within or without the District, and services, to any person for the purpose of use, storage, or consumption, within the District, taxable under the terms of this chapter. These terms shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but shall not be limited to, the following:

(A) Any production, fabrication, or printing of tangible personal property on special order for a consideration;

(B) The sale of natural or artificial gas, oil, electricity, solid fuel or steam;

(C) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold;

(D) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event for the purposes of this chapter, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid; provided, however, that the gross proceeds from the rental of films, records, or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale;

(E) The sale of any meals, food or drink, or other like tangible personal property for a consideration as described in § 47-2001(n)(1)(A);

(F) The sale of or charge for admission to public events except live performances of ballet, dance or choral performances, concerts (instrumental and vocal), plays (with and without music), operas and readings and exhibitions of paintings, sculpture, photography, graphic and craft arts, but including movies, circuses, burlesque shows, sporting events and performances or exhibitions of any other type or nature; provided, that any casual or isolated sale of or charge for admission made by a semi-public

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

institution not regularly engaged in making such sales or charges shall not be considered a retail sale or sale at retail;

(G) The sale of or charges for the service of repairing, altering, mending, or fitting tangible personal property, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property, whether or not such service is performed by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction with such service;

(H) The sale of or charges for copying, photocopying, reproducing, duplicating, addressing, and mailing services and for public stenographic services;

(I) The rental of textiles to commercial users, the essential part of which rental includes recurring service of laundering or cleaning thereof;

(J) The sale of or charges for the service of real property maintenance and landscaping;

(i) For the purposes of this subparagraph, the term "real property maintenance" means any activity that keeps the land or the premises of a building clean, orderly, and functional, including the performance of minor adjustments, maintenance, or repairs, which include: floor, wall, and ceiling cleaning; pest control; window cleaning; servicing inground and in building swimming pools; exterior building cleaning; parking lot, garage, and recreation area maintenance; exterior and interior trash removal; restroom cleaning and stocking; lighting maintenance; chimney and duct cleaning; or ground maintenance; but does not include; painting; wallpapering, or other services performed as part of construction or major repairs; or services performed under an employee-employer relationship; and

(ii) For the purposes of this subparagraph, the term "landscaping" means the activity of arranging or modifying areas of land and natural scenery for an improved or aesthetic effect; the addition, removal, or arrangement of natural forms, features, and plantings; the addition, removal, or modification of retaining walls, ponds, sprinkler systems, or other landscape construction services; and other services provided by landscape designers or landscape architects such as consultation, research; preparation of general or specific design or detail plans, studies; specifications or supervision, or any other professional services or functions associated with landscaping;

(K) The sale of or charges for data processing service and information service;

(i) For the purposes of this subparagraph, the term "data processing service" means the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment; the specification of computer hardware configurations; the evaluation of technical processing characteristics, computer programming or software, provided in conjunction with and to support the sale, lease, operation, or application of computer equipment or systems; work processing; payroll and business accounting, computerized data and information storage and manipulation; the input of inventory control data for a company; the maintenance of records of employee work time; filing payroll tax returns; the preparation of W-2 forms; the computation and preparation of payroll checks; and any system or application programming or software. The term "data processing services" does not include a service provided by a member of an affiliated group of corporations to other corporate members of the group. Data processing services shall be exempt from use tax if the service is rendered by a member of the affiliated group of corporations, has not been purchased with a certificate of resale or exemption to the corporation providing the service, is rendered for the purpose of expense allocation; and is not for the profit of the corporation providing the service. For the purposes of this sub-subparagraph, the term "affiliated group" shall have the same meaning as defined in 26 U.S.C. § 1504(a); and

(ii) For the purposes of this subparagraph, the term "information service" means the furnishing of general or specialized news or current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by wire, cable, radio waves, microwaves, satellite, fiber optics, or any other method in existence or which may be devised; electronic data retrieval or research, including newsletters, real estate listings, or financial, investment, circulation, credit, stock market, or bond rating reports; mailing lists; abstracts of title; news clipping services; wire services;

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

scouting reports; surveys; bad check lists; and broadcast rating services; but does not include: information sold to a newspaper or a radio or television station licensed by the Federal Communication Commission, if the information is gathered or purchased for direct use in newspapers or radio or television broadcasts; charges to a person by a financial institution for account balance information; or information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled;

(L) The sale or charge for any newspaper or publication;

(M)(i) The sale of or charges for stationary two-way radio services, telegraph services, teletypewriter services, and teleconferencing services. The sale or charges described in this sub-subparagraph shall not be considered sales of private communication services as defined in § 47-2001(n)(1)(G)(iv);

(ii) The sale of or charges for “900”, “976”, “915”, and other “900”-type telecommunication services;

(iii) The sale of or charges for telephone answering services, including automated services and services provided by human operators; and

(iv) The sale of or charges for services enumerated in sub-subparagraphs (i) through (iii) of this subparagraph shall not include sales of or charges for services that are subject to tax under § 47-2501 or Chapter 39 of this title;

(N) The sale of or charges for the service of laundering, dry cleaning, or pressing of any kind of tangible personal property, except when the service is performed by means of self-service, coin-operated equipment, and the rental of textiles to commercial users when the essential part of the rental includes the recurring service of laundering or cleaning thereof;

(O) The sale of or charge for any delivery in the District for which a separate charge is made, except merchandise delivered for resale for which a District of Columbia certificate of resale has been issued or the delivery of any newspapers;

(P) The sale of or charge for the service of procuring, offering, or attempting to procure in the District job seekers for employers or employment for job seekers, including employment advice, counseling, testing, resume preparation and any other related ~~service; or service~~;

(Q) The sale of or charge for the service of placing a job seeker with an employer in the District; ~~or~~

(R) The sale of or charges for digital goods as defined in §47-2001(d-1).

(2) The terms “retail sale,” “sale at retail,” and “sold at retail” shall not include the following:

(A) Sales of data processing, information, or transportation and communication services other than sales of data processing services, information services, or any service enumerated in paragraph (1)(M) of this subsection, or the sale of or charge for any delivery in the District for which a separate charge is made;

(B) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made, except as otherwise provided in subsection (a)(1) of this section;

(C) Sales of tangible personal property which property was purchased or acquired by a nonresident prior to coming into the District and establishing or maintaining a temporary or permanent residence in the District. As used in this subsection, the word “residence” means a place in which to reside and does not mean “domicile”;

(D) Sales of tangible personal property which property was purchased or acquired by a nonresident person prior to coming into the District and establishing or maintaining a business in the District;

(E) The use or storage within the District of tangible personal property owned and held by a common carrier or sleeping car company for use principally without the District in the course of interstate commerce, or commerce between the District and a state, in or upon, or as part of, any train, aircraft, or boat; or

(F) Sales of Internet access service.

(i) For the purposes of this subparagraph, the term “Internet access service” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

and may also include access to proprietary content, information, and other services as part of a package of Internet access services offered to consumers.

(ii) "Internet access service" shall not include the sale of or charges for data processing and information services as defined in paragraph (1)(K)(i) and (ii) of this subsection that do not enable users to access content, information, electronic mail, or other services offered over the Internet.

(iii) "Internet access service" shall not include telecommunication services as defined in paragraph (1)(M) of this subsection or Chapter 39 of this title.

(b) "Purchase" and "purchased" mean and include:

(1) Any transfer, either conditionally or absolutely, of title or possession or both of the tangible personal property sold at retail;

(2) Any acquisition of a license or other authority to use, store, or consume, the tangible personal property sold at retail; and

(3) Any sale of services sold at retail.

(c) "Purchaser" means any person who shall have purchased tangible personal property or services sold at retail.

(d) "In the District" and "within the District" mean within the exterior limits of the District of Columbia and include all territory within such limits owned by the United States of America.

(e) "Store" and "storage" mean any keeping or the retention of possession in the District for any purpose, other than for the purpose of subsequently transporting the property outside the District for use solely outside the District, of tangible personal property purchased at retail sale.

(f) "Use" means the exercise by any person within the District of any right or power over tangible personal property and services sold at retail, whether purchased within or without the District by a purchaser from a vendor.

(g) "Vendor" includes every person or retailer engaging in business in the District and making sales at retail as defined herein, whether for immediate or future delivery of the tangible personal property or performance of the services. When in the opinion of the Mayor it is necessary for the efficient administration of this chapter to regard any salesman, representative, peddler, or canvasser, as the agent of the dealer, distributor, supervisor, or employer, under whom he operates or from whom he obtains the tangible personal property sold or furnishes services, the Mayor may, in his discretion, treat and regard such agent as the vendor jointly responsible with his principal, employer, or supervisor, for the assessment and payment or collection of the tax imposed by this chapter.

(h) "Engaging in business in the District" includes the selling, delivering, or furnishing in the District, or any activity in the District in connection with the selling, delivering, or furnishing in the District, of tangible personal property or services sold at retail as defined herein. This term shall include, but shall not be limited to, the following acts or methods of transacting business:

(1) The maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; and

(2) The having of any representative, agent, salesman, canvasser, or solicitor operating in the District for the purpose of making sales at retail as defined herein, or the taking of orders for such sales.

(i) "Retailer" includes every person engaged in the business of making sales at retail.

(j) The definitions of "additional charges," "business," "District," "food or drink," "gross receipts," "Mayor," "net charges," "person," "purchaser's certificate," "retail establishment," "return," "room remarketer," "sale" and "selling," "sales price," "semipublic institution," "tangible personal property," "tax," "tax year," "taxpayer," and "transient" as defined in Chapter 20 of this title, are incorporated in and made applicable to this chapter.

(k) The foregoing definitions shall be applicable whenever the words defined are used in this chapter unless otherwise required by the context.

**BILL 22-914 COMPARATIVE PRINT
COMMITTEE ON FINANCE AND REVENUE**

§ 47-2501.01. Television, video, or radio service to subscribers or paying customers.

(a) Before the 21st day of each calendar month, each company that sells or charges for cable television service, satellite relay television service, and any and all other distribution of television, video, or ~~radio service with or without~~ radio service, other than sales of digital goods as defined in §47-2001(d-1) and subject to tax pursuant to § 47-2001(n)(1)(C) or §47-2201 (a)(1)(R)), or both with or without the use of wires provided to subscribers or paying customers, whether for basic service, ancillary service, or other special service, and any other charges related to providing the services within the District of Columbia, including, but not limited to, rental of signal receiving equipment, shall:

- (1) File an affidavit with the Mayor indicating the amount of its gross receipts for the preceding calendar month from the sale of or charges for the services within the District;
- (2) Until May 31, 1994, pay to the Mayor 9.7% of these gross receipts; and
- (3) After May 31, 1994, pay to the Mayor 10% of its gross receipts from sales included in bills rendered after May 31, 1994.

(b) Notwithstanding any other provision of law, each company subject to the tax imposed by this section shall pay, in addition to the gross receipts tax, the franchise tax imposed by Chapter 18 of this title, the real property tax imposed by Chapter 8 of this title, the personal property tax imposed by § 47-1521 et seq., to the extent provided in § 47-1508.

(c) For the purpose of this section, the term “company” does not include a nonprofit educational organization that provides programming to subscribers or other persons under an Instructional Television Fixed Service License issued by the Federal Communications Commission. The gross receipts of a nonprofit educational organization that provides programming to subscribers or other persons under an Instructional Television Fixed Service License issued by the Federal Communications Commission shall not be subject to the tax established by this section.

6

BILL 22-914
COMMITTEE ON FINANCE AND REVENUE
COMMITTEE PRINT
NOVEMBER 7, 2018

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 47 of the District of Columbia Official Code to provide for triggers to lower the commercial property tax rate for real property with an assessed value of greater than \$10 million, to provide that for a certain period specified revenue shall be directed to the Commission on the Arts and Humanities, to clarify that a person or a retailer without a physical presence in the District are vendors required to collect and pay sales tax on retail sales, to expand the definition of retailer to include marketplace facilitators and marketplace sellers, to clarify that the sale of electronically delivered products is a retail sale subject to sales tax, to make conforming changes to the use tax regarding electronically delivered products, to clarify that electronically delivered products subject to sales or use tax are not subject to the gross receipts tax; and to repeal Chapter 39A.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Internet Sales Tax Amendment Act of 2018".

Sec. 2. Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-812(b-9)(2) is amended by adding a new subparagraph (D) to read as follows:

(1) Subparagraph (C) is amended by striking the figure "\$1.89" and inserting the phrase "Except as provided in subparagraph (D) of this paragraph, \$1.89" in its place.

(2) A new subparagraph (D) is added to read as follows:

"(D)(i) Notwithstanding subparagraph (C)(iii) of this paragraph, and except as provided in sub-subparagraph (ii) of this subparagraph, for the tax year beginning October 1,

2019, and each tax year thereafter, the recurring annual revenue collected pursuant to the Internet Sales Tax Amendment Act of 2018, as introduced on July 9, 2018 (Bill 22-914) (“IST revenue”), as certified by the Chief Financial Officer in the quarterly revenue estimate issued in February 2019, and each February thereafter, shall, to the extent the IST revenue is in excess of that required for the financial plan for the current fiscal year (“excess IST revenue”), reduce the property tax rate under subparagraph (C)(iii) of this paragraph, as determined at the time of the February quarterly revenue estimate, to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value; provided, that the rate is no less than \$1.85 per \$100 of assessed value; provided further, if the tax rate remains greater than \$1.85 per \$100 of assessed value, for the tax year beginning October 1, 2020, and each tax year thereafter, the excess IST revenue shall reduce the property tax rate to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value that is at least \$1.85 per \$100 of assessed value.

“(ii) For the period beginning on January 1, 2019, through September 30, 2019, IST revenue shall be directed to the Commission on the Arts and Humanities, established by the Commission on the Arts and Humanities Act, effective January 29, 1998 (D.C. Law 12-42; D.C. Official Code § 39-201, *et seq.*, to support the functions, purposes, and costs of the Commission.”.

(b) Chapter 20 is amended as follows:

(1) Section 47-2001 is amended as follows:

(A) A new subsection (d-1) is added to read as follows:

“(d-1)(1) “Digital goods” means digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, and any other otherwise taxable tangible personal property electronically or digitally delivered, whether electronically or digitally delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other

manner, including maintenance, updates, and support. The term “digital goods” does not include cable television service, satellite relay television service, or any other distribution of television, video, or radio service subject to tax under § 47–2501.01, unless expressly included in the definition of digital goods under paragraph (1) of this subsection.

“(2) For the purposes of this subsection, the term:

“(A) “Digital audiovisual works” means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds. “Digital audiovisual works” includes motion pictures, musical, videos, news and entertainment programs, and live events.

“(B) “Digital audio works” means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or livesongs, music, readings of books or other written materials, speeches, ringtones, or other sound recording.

“(C) “Digital books” means works that are generally recognized in the ordinary and usual sense as “books” that are transferred electronically, including works of fiction, nonfiction, and short stories.

“(D) “Digital code” means a code that provides the person who holds the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital book that may be obtained by any means, including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code. Term “digital code” includes codes used to access or obtain any specified digital goods, or any additional digital goods that have been previously purchased, and promotion cards or codes

that are purchased by a retailer or other business entity for use by the retailer's or entity's customers.

“(E) “Digital applications and games” mean any application or game, including add-ons or additional content that can be used by a computer, mobile device, or tablet notwithstanding the function performed.”.

(B) Subsection (h) is redesignated as subsection (g-3).

(C) New subsections (g-4), (g-5) and (h) are added to read as follows:

“(g-4) “Marketplace” means a physical or electronic place, including a store, a booth, an internet web site, a catalogue, or a dedicated sales software application, where a retail sale, as defined in subsection (n) of this section, occurs.

“(g-5) “Marketplace facilitator” means a person who provides a marketplace that lists, advertises, stores, or processes orders for retail sales subject to tax under this chapter for sale by such marketplace sellers, and directly or indirectly collects payment from a purchaser and remits payment to a marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

“(h) “Marketplace seller” means a person that makes retail sales through a marketplace operated by a marketplace facilitator.”.

(D) Subsection (h-2) is repealed.

(E) Subsection (l) is amended as follows:

(A) Paragraph (2) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(B) Paragraph (3) is amended by striking the phrase “consumption.” and inserting the phrase “consumption; and” in its place.

(C) New paragraphs (4) and (5) are added to read as follows:

102 “(4) Every marketplace facilitator; and
103 “(5) Every marketplace seller.
104 (F) Subsection (n) is amended as follows:
105 (A) Paragraph (1) is amended as follows:
106 (i) Strike the phrase “by a nexus-vendor”.
107 (ii) Subparagraph (Z) is amended by striking the word “or” at the
108 end.
109 (iii) Subparagraph (AA)(ii)(II) is amended by striking the period
110 and inserting the phrase “; or” in its place.
111 (iv) A new subparagraph(BB) is added to read as follows:
112 “(BB) The sale of or charges for digital goods.”.
113 (B) Subparagraph (2) is amended as follows:
114 (i) Subparagraph (C) is amended by striking the phrase “and is not
115 sold by a nexus-vendor”.
116 (ii) Subparagraph (F) is amended by adding a sub-subparagraph
117 (iv) to read as follows:
118 “(iv) “Internet access service” shall not include digital goods as
119 defined in § 47-2001(d-1).”.
120 (G) Subsection (w) is amended as follows:
121 (A) Strike the phrase “, including a nexus vendor,”.
122 (B) Strike the phrase “this chapter.” and insert the phrase “this chapter,
123 including a person or retailer that does not have a physical presence in the District that in the
124 previous calendar year or the current calendar year had gross receipts from all retail sales

delivered into the District that exceeds \$100,000 or 200 or more separate retail sales delivered into the District.” in its place.

(2) A new section 47-2002.01a is added to read as follows:

“§ 47-2002.01a. Marketplace facilitators; sales tax requirements.

“Marketplace facilitators shall collect and remit sales tax on all sales the marketplace facilitator makes on its own behalf and all sales the marketplace facilitator facilitates on behalf of marketplace sellers to customers in the District of Columbia regardless of whether the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.”.

(c) Section 47-2201(a)(1) is amended as follows:

(1) Subparagraph (P) is amended by striking the phrase “service; or” and inserting the phrase “service;” in its place.

(2) Subparagraph (Q) is amended by striking the period and inserting the phrase “; or” in its place.

(3) A new subparagraph (R) is added to read as follows:

“(R) The sale of or charges for digital goods as defined in § 47-2001(d-1).”.

(d) Section 47-2501.01(a) is amended by striking the phrase “radio service with or without” and inserting the phrase “radio service, other than sales of digital goods as defined in § 47-2001(d-1) and subject to tax pursuant to § 47-2001(n)(1)(C) or § 47-2201(a)(1)(R)), or both, with or without” in its place.

(e) Chapter 39A is repealed.

146 Sec. 3. Applicability.

147 Section 2(b), (c), (d), and (e) of this act shall apply as of January 1, 2019; except, that
148 section 2(b)(1)(E) shall apply as of April 1, 2019.

149 Sec. 4. Fiscal impact statement.

150 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
151 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
152 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

153 Sec. 5. Effective date.

154 This act shall take effect following approval by the Mayor (or in the event of veto by the
155 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
156 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
157 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
158 Columbia Register.